No. 80-6206

IN THE SUPREME COURT OF THE UNITED STATES

FREDDIE F. LEE, Petitioner

V.

BOARD OF OVERSEERS OF THE BAR

RECEIVED
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SUPREME COURT, U.S.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner, Freddie F. Lee, asks leave to file the attached appeal and jurisdictional statement without prepayment of costs and to proceed in forma pauperis. Petitioner has not previously been granted leave to so proceed because he has been the respondent defending pro se the attempts by the Board of Overseers of the Bar to suspend his license to practice for failure to pay a "registration fee." Petitioner's affidavit in support of this motion is attached hereto.

Freddie F. Lee
Petitioner, Pro Se

AFFIDAVIT

80-6206

I, Freddie F. Lee, being first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of proceeding in the Court are true.

1. Are you presently employed?

   Answer: Yes. I receive a bi-weekly paycheck based on a weekly salary of $246.80 which computes to a monthly salary of $1061.24. I am employed by the Maine Department of Manpower Affairs, Bureau of Employment Security, 20 Union St., Augusta, Maine 04330, assigned to the office in Portland, Maine as a Field Advisor and Examiner I.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

   Answer: Yes. I have been determined by the Veteran's Administration to be 50% disabled due to service incurred injuries to both of my eyes, and I receive a monthly disability compensation check in the sum of $342.18.

3. Do you own any cash, or checking or savings account?

Answer: Yes. I have shares in the Maine State Employees Federal Credit Union in the sum of $698.00 which is pledged as security for a loan made in February 1980 to purchase a used car described in the answer to Question 4 below. And I have a 1/2 interest in a checking account with my wife which usually is depleted to a near zero balance just before each payday because of payment of basic living expenses. And, I own jointly with my wife a savings account having a balance of $1223.00 which has been saved to pay 1980 income taxes, automobile insurance premiums, and excise taxes.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing) ?

Answer: I do not own any real estate, stocks, bonds, notes or other valuable property but I do own a 1977 Buick Skyhawk automobile which I purchased in February 1980 for $3500.00 with a loan from the Credit Union mentioned in Answer No. 3 above, on which a balance of $1800.00 is still owed and payments on which are deducted from my bi-weekly paycheck.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer: Beverly Lou Lee, Wife.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Freddie F. Lee

Subscribed and Sworn to before me this 13th day of February, 1981.

Notary Public

Expiration 6/25/85

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

* * * * * * * * * * * * * *

80-6206

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

* * * * * * * * * * * * * * *

ON APPEAL FROM THE SUPREME JUDICIAL COURT

OF MAINE

* * * * * * * * * * * * * * *

CERTIFICATE OF SERVICE

* * * * * * * * * *

I, Freddie F. Lee, appellant herein, do hereby certify that a true and accurate copy of this Motion and supporting affidavit has been served on all parties required to be served, and in particular on the Board of Overseers of the Bar, by placing said copy in the United States Mail, postage prepaid, addressed to Board of Overseers of the Bar, P.O. Box 1820 Augusta, Maine 04330, to the attention of Michael E. Barr, Bar Counsel on the 13th day of February, 1981.

Freddie F. Lee

FREDDIE F. LEE
Appellant, Pro Se
Route 107 (Sebago)
East Baldwin, Maine 04024
207/787-3367

Subscribed and Sworn to before me
this 13th day of February, 1981.

Shirley Rowe
Notary Public

Expires
6/13/85

RECEIVED
FEB 17 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 80-6206

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

* * * * * * * * * * * * * *

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

* * * * * * * * * * * * * * * *

ON APPEAL FROM THE SUPREME JUDICIAL COURT

OF MAINE

* * * * * * * * * * * * * * *

JURISDICTIONAL STATEMENT

* * * * * * * * *

Freddie F. Lee
Route 107 (Sebago)
East Baldwin, Maine 04024
Appellant
Pro Se

QUESTIONS PRESENTED

1. Whether the actions of the Supreme Judicial Court of the State of Maine, in promulgating and enforcing Rule 10 of the Maine Bar Rules, which levies a tax on lawyers, and levies it unequally, the failure to pay which results in the indefinite suspension of a lawyer from his right to practice law under a valid license are violative of the Due Process Clauses of the Fifth and Fourteenth Amendments and of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

2. Whether the actions of the Supreme Judicial Court of the State of Maine, in promulgating and enforcing Rule 10 of the Maine Bar Rules which levies a tax on lawyers, and levies it unequally, and levies a penalty of a reinstatement fee, the failure to pay which results in the indefinite suspension of a lawyer from his right to practice law under a valid license, are violative of the lawyer's rights under the separation of powers provisions of the Constitution of the State of Maine.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

* * * * *

NO._____

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

* * * * *

ON APPEAL FROM THE

SUPREME JUDICIAL COURT OF MAINE

* * * * *

JURISDICTIONAL STATEMENT

* * * * *

Freddie F. Lee, the appellant, appeals from the final judgment of the Supreme Judicial Court of Maine, dated November 17, 1980, holding that Rules 6 and 10 of the Maine Bar Rules are constitutional and are not violative of appellant's rights of due process and equal protection under the Fifth and Fourteenth Amendments of the Constitution of the United States and are not violative of his rights of equal protection under the provisions of Article I § 22, Article IV § 9 and Article IX § 9 of the Constitution of the State of Maine.

OPINIONS BELOW

The opinion and judgment of the Supreme Judicial Court of Maine, appears in the appendix hereto, p. 11 infra, and is reported at 422 A.2d 998 (1980).

The opinion and judgment of the Single Justice of the Supreme Judicial Court of Maine, dated May 29, 1980 appears in the appendix hereto, p. 27 infra, and are not reported.

The findings and determination of Panel A of the Grievance Commission of the Board of Overseers of the Bar dated November 23, 1979 appear in the appendix hereto, p. 36 infra and are not reported.

JURISDICTION

The judgment of the Supreme Judicial Court of Maine indefinitely suspending appellant from the practice of law in Maine until he pays not only the fees imposed for 1979 and 1980 but a penalty reinstatement fee

was entered on November 17, 1980. See p. 25 of appendix, infra.

A notice of appeal to this Court was filed in the Supreme Judicial Court of Maine on January 12, 1981. See p. 50 of appendix, infra. This appeal is being docketed in this Court within 90 days from the date of judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

QUESTIONS PRESENTED

1. Whether the actions of the Supreme Judicial Court of the State of Maine, in promulgating and enforcing Rule 10 of the Maine Bar Rules, which levies a tax on lawyers, and levies it unequally, the failure to pay which results in the indefinite suspension of a lawyer from his right to practice law under a valid license are violative of the Due Process Clauses of the Fifth and Fourteenth Amendments and of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

2. Whether the actions of the Supreme Judicial Court of the State of Maine, in promulgating and enforcing Rule 10 of the Maine Bar Rules which levies a tax on lawyers, and levies it unequally, and levies a penalty of a reinstatement fee, the failure to pay which results in the indefinite suspension of a lawyer from his right to practice law under a valid license, are violative of the lawyer's rights under the separation of powers provisions of the Constitution of the State of Maine.

CONSTITUTIONAL PROVISIONS

Fifth Amendment to the United States Constitution

"No person shall....be deprived of....property, without ~~due~~ due process of law....

Fourteenth Amendment to the United States Constitution

....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of....property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Maine

Article 1, § 22. No tax or duty shall be imposed without the consent of the people or of their representatives in the legislature.

Article III, Section 1. The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial.

Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

Article IV, Part 3, § 9. ....but all bills for raising a revenue shall originate in the House of Representatives,....

Article IX, § 9. The Legislature shall never, in any manner, suspend or surrender the power of taxation.

RAISING THE FEDERAL QUESTION

At the earliest stage prior to this proceeding, the appellant raised the issue that the Supreme Judicial Court of the State of Maine did not have the authority to assess a tax on lawyers, (See letters dated February 26, 1979 and August 16, 1979, pp 44,45 of the appendix) and at every subsequent stage of this proceeding. There is even now an additional issue of due process which only arose in the Maine Supreme Judicial Court's decision when it held that it (the Court) could not delegate to the Board of Overseers of the Bar the power of suspending a lawyer from the practice of law for failure to pay the tax. It is suggested that when the Court struck down such "delegation of power" in Rule 10 there remained no provision for any other authoritative body (including the Supreme Court) to suspend appellant from the practice of law for failure to pay the tax. (See p. 25 line 15 et seq. of the Opinion and Judgment of the Supreme Judicial Court of Maine dated November 17, 1980)

STATEMENT OF THE CASE

The Supreme Judicial Court of the State of Maine caused to be prepared, and promulgated, a set of regulations, designated as "Maine Bar Rules", containing among others, Rule 10 which is set out verbatim

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at page 52 in the appendix. Paragraph (a) of said rule provided that every attorney.... shall pay an annual fee as established by the Court; (b) provided that, upon failure to pay, any attorney shall be subject to a summary notice of suspension by the Board; (c) provided a penalty or reinstatement fee which could be excused by the Board if to impose it would have been a grave injustice; (d) set the amounts of the varying fees to be paid by attorneys under certain classifications; (e) provided for the use of the funds so raised from the fees; and (f) provided for an annual audit of the funds.

Appellant timely (February 26, 1979) filed the registration statement required by Rule 6 but did not send in the $100.00 fee at that time questioning the power of the Board or Court to require him to join an association, or "union", and to assess a tax for same.

In May 1979 the Board of Overseers of the Bar, acting through bar counsel, mailed a letter to appellant advising him that he would be summarily suspended from the practice of law effective June 1, 1979 if he failed to pay the required tax by that date. Appellant refused to pay the tax and shortly thereafter appeared twice in Court on a previously set divorce hearing. These actions were reported to the Board of Overseers of the Bar by the Judge of that Court and shortly thereafter appellant received a letter from bar counsel requesting an explanation of his appearances in court. Response was made by appellant again asserting the appellant's position that neither the Court nor Board had the authority to tax lawyers.

This response resulted in the filing by bar counsel a complaint with the Grievance Commission in Bangor, Maine, a three and one-half hour drive from the office and residence of appellant. Panel A of the Grievance Commission on November 20, 1979 held a hearing, not attended by appellant, and directed bar counsel to begin disciplinary proceedings, which was done on December 20, 1979. Appellant responded again disputing authority of Board and/or Court to tax and, if not paid, to suspend. Appellant also again took issue with the inequality of the fees assessed.

A hearing was held in Portland, Maine before the Hon. Justice David C. Roberts, a single justice of the Maine Supreme Judicial Court on April 10, 1980. This hearing resulted in the decision by Justice Roberts that

the Court could not delegate to the Board of Overseers of the Bar, the power to summarily suspend a lawyer under Rule 10 of the Maine Bar Rules. THEN Justice Roberts, acting without any authority of or directive from the Rules entered an order immediately suspending appellant from the practice of law until he paid all arrearages of fees and the reinstatement fee.

Appellant timely filed an appeal from the single justice's decision requesting the full Supreme Judicial Court to decide the issues.

Oral argument was presented on November 3, 1980 and a decision by the Supreme Judicial Court was rendered on November 17, 1980. This decision, beginning on page 11 of the appendix affirmed the decision of Justice Roberts which held, inter alia, that the Court could not delegate the power to summarily suspend an attorney for failure to pay the "fees" but then affirmed Justice Roberts' immediate suspension of appellant, again without any rule or statutory authority.

Appellant has contended, simply that in establishing a policing agency, staffed by personnel (3 laymen, 6 lawyers) selected by the Supreme Judicial Court the staff's salaries and/or all other administrative expenses being paid out of the revenue raised by the illegal tax, the Court has levied a tax, an unequal tax, the failure to pay which results in the loss of the right to practice law. There has been no contention at any time that the Courts did not have the authority and the responsibility to supervise the legal profession and to discipline its members when necessary. How well and in what manner efficiently financially the Court exercises that authority and performs that responsibility must be left up to the Legislature of Maine which controls all of the purse strings of all other governmental agencies.

THE QUESTION IS SUBSTANTIAL

The question as to the power of the Supreme Courts of the various states to promulgate rules for the supervision and regulation of lawyers has been before this Court before in Lathrop v. Donohue (Wisconsin Bar unification) wherein this Court stated that the setting of the fees was legislative in nature, and rightly so, the fees in that case were established by the Wisconsin Legislature.

The question of whether the practice of law is a right and not a privilege has been before this Court in Baird v. State Bar of Arizona (1971) where this Court (citing the Schware case) stated:

> "The practice of law is not a matter of grace, but of right, for one who is qualified by his learning and his moral character."

The question of a state's Supreme Court promulgating a rule requiring an annual registration fee was decided by the U.S. Court of Appeals, 6th Circuit, in Able v. Fones (1978) 587 F2d 850, holding that the Tennessee Supreme Court did have that authority without deciding or passing on any constitutional question.

There were also submitted to this Court the two cases both of which were challenges of the statutory fees, not court rule established fees, but one of them, A Member of the Bar, Del. Supr., 257 A2d 382 (1969) app. denied, was not heard, and the other, ReReed, 396 U.S. 274, was dismissed on motion for lack of jurisdiction and there was no ruling on the merits.

However, the question in the case at bar is novel to the Court as to the claimed violation of the Fifth and Fourteenth Amendments provisions of the process and equal protection, especially where the revenue raised from the illegal and unequal tax is used solely for policing the legal profession and not for "financing" other unified bar activities.

This question is substantial due to the groundswell of recent bar unifications throughout the nation and the need to protect and preserve the explicit and implicit constitutional separation of powers within the states. It would appear from an adverse ruling in the case at bar, that a person who becomes a practicing lawyer in Maine surrenders his constitutionally mandated right to be taxed solely by the legislature of his state and becomes a member of a special class of citizen of the State of Maine and does not have the equal rights of the other citizens of Maine whose license and occupational fees are determined by the Maine Legislature.

The entire judicial department of the State of Maine in carrying out its express constitutional duties cannot adopt or promulgate any rule assessing a tax on any member of the citizenry of the State of Maine to

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raise the funds to pay its staff salaries or administrative expenses but must constitutionally rely on the legislative department to raise the revenue necessary. If the judiciary cannot tax for its express powers it follows logically that it also cannot tax to perform its "inherent" powers.

To permit such an illegal tax to stand where will such taxing power end? Who, but the perpetrator of an illegal tax, would pass upon or interpret such a tax. This is not the American democratic separation of powers all of us have come to know and respect. If the Supreme Court of the United States has neither the purse nor the sword to enforce its decisions, then there is no logical justification for a state Supreme Court having a purse and/or a sword to carry out its functions.

It must be kept in mind that the Supreme Judicial Court of the State of Maine is the highest court in the state's judicial system and must limit its activities to "interpreting" the laws passed by the legislature instead of expanding its powers to include the power of taxation. Otherwise, where does the aggrieved victims of such illegal taxes turn to obtain justice from an unbiased and impartial court?

The question of equal protection is not a novel one and has been before this Court on many occasions. However, when the highest court of a state levies an unequal tax and refuses to even consider a properly raised issue of inequality or to even make known to either the legal profession or the public at large the reasons for such inequality or unfair classification, this Court should not hesitate to again unequivocally strike down such illegal action. Appellant had introduced into evidence before the single justice the letter by which all attorneys in the State of Maine were notified of the requirements of Maine Bar Rule 6 to file a registration statement and of Maine Bar Rule 10 which set the unequal "fees". And it was requested, before both single justice and the full court that it take judicial knowledge of its own rules. Yet the Supreme Judicial Court said Appellant had not introduced any evidence of the disparity in the fees so it (the Court) ignored the question completely. Does this seem to be a decision by an unbiased and impartial court? Appellant is denied due process by such an action of this unbiased court and by the actions of, not only the single justice, who, without any rule or statutory authority entered his order suspending appellant from the

practice of law, but of the full court which affirmed his decision, also without any rule or statutory authority. In its opinion (Page 25) the Court referred to the failure of the "rule-makers" (who are they?) to make suspension (for failure to pay the fee)an automatic one and then delegated to an agent the ministerial task of suspension. It further said (Page 25)

> "The difficulty with the present Maine Bar Rule 10 (b) is that by using the words "Subject to" the rule-makers have left ambiguous whether or not the Board of Overseers of the Bar was to exercise a judicial discretion in deciding in a given case whether the attorney was to be suspended. <u>This was inappropriate.</u> The single justice found the purported suspension to be invalid. We agree for the reason to which we have just averted. He correctly acted himself to suspend Attorney Lee for failure to pay the validly prescribed registration fee for Maine attorneys."
> (Underscoring supplied)

Now what was decided by the Court when it made the foregoing statement? Did it hold that the entire paragraph (b) of Rule 10 to be invalid or did it declare that the Board of Overseers of the Bar did not have the power to suspend an attorney for failure to pay the fee? If so, did the Court by striking down such a delegation of authority, somehow amend the rule? If so, it did not in so many words say so. Where does the Court's authority now flow from to suspend appellant from the practice of law? Certainly, not from the rule. This then is the denial of due process, in and of itself a substantial question.

The Supreme Judicial Court of the State of Maine has imposed Maine Bar Rule 10 against appellant in such a manner as to require appellant to remain indefinitely suspended or pay an illegally, and unequally levied tax. For the Maine Supreme Judicial Court to say the tax is a "fee" but

is not for the purpose of raising of revenue is a fallacy. All fees are for the purpose of raising revenue to offset expenses and have a secondary purpose of regulation and control. Sometimes the amount of the fees more than cover the expense and sometimes they don't but such a result of the taxation is happenstance and one on which the Court must recognize in its reliance on the legislature which must control the purse strings as the Maine Constitution requires.

The question of "inherent power" has arisen in many of the cases before this Court. And such a question is a substantial one, because of most, if not all of the states' constitutions and the federal constitutions requirements of separation of powers. The Maine Constitution Article III, Section 1 so provides (for the legislative, executive and judicial) and Section 2 provides that no person or persons, belonging to one of these departments shall exercise any of the powers properly belonging to the others, except in the cases herein expressly directed or permitted. (None of which provided for the judicial department to raise revenue.)

The Maine Constitution, Article IV, Part 3, Section 9 provided that all bills for raising a revenue shall originate in the House of Representatives. Note, it does say for the raising of a revenue. If this illegal tax was a "registration fee" then why is the fee so unequal for such registration, and why must a "registration fee" be paid annually rather than once at the time of registration? Because it is an annually recurring revenue raising measure, the amount assessed each year being recommended by the Board of Overseers of the Bar and being legislatively set by the Supreme Judicial Court of the State of Maine.

The Maine Supreme Judicial Court defined the process of taxation in Morris v. Goss, 147 Me. 89 83 A2d 556, as follows:

> "The exercise of the power to tax necessarily involves two steps, both of which are within the sole province of the legislature: (Underscoring supplied)
> First, a determination of the nature of the tax to be imposed; and
> Second, the effective imposition of the tax in such manner as to insure its collection and availability to the State for the purposes for which it was raised".

How appropriately this quotation of the words of the Maine Supreme

Court describes the Court's exercise of the power to tax in promulgating Maine Bar Rule 10. First it determined the nature of the tax to be imposed - Registration Fee. Second, it effectively imposed the ~~the~~ tax (fee) in such a manner as to insure its collection and availability for the purposes for which it was raised, Suspend the attorney's privilege to practice law if he or she fails to pay. Very effective imposition.

In State v. Butler, (1909) 105 Me. 91, 73 A 560 this same Supreme Court unequivocally stated

> "The entire legislative power of the State is by the Constitution vested exclusively in the Legislature and no part of that power may be transferred or delegated to either of the other departments of the government".

In promulgating Maine Bar Rule 10 assessing a "fee" which appellant has refused to pay, has resulted in the unconstitutional deprivation of appellant's right to practice law.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

Freddie F. Lee

FREDDIE F. LEE
Appellant, Pro Se
Route 107 (Sebago)
East Baldwin, Maine 04024
Tel. No. 207/787-3367

January 13, 1981

APPENDIX

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IN THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR

LAW DOCKET
NO. CUM-80-48

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Freddie F. Lee, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Judicial Court of the State of Maine, affirming the judgment of a single justice entered in this action on November 17, 1980.

This appeal is taken pursuant to 28USC§1257(2).

Freddie F. Lee

FREDDIE F. LEE, Appellant
Pro Se

PROOF OF SERVICE

I, Freddie F. Lee, hereby certify that a true and accurate copy of this Notice of Appeal has been served on the Board of Overseers of the Bar by placing same in the United States Mail, with sufficient postage, addressed to Board of Overseers of the Bar, P.O. Box 1820, Augusta, Maine 04330, to the attention of Michael E. Barr, Bar Counsel, on the 14th day of January 1981.

Dated: January 14th, 1981.

FREDDIE F. LEE

Freddie F. Lee

Appellant, Pro Se
Route 107 (Sebago)
East Baldwin, Maine 04024
207/787-3367

Filed in the Office of the Clerk of the
Supreme Judicial Court of Maine
on January 14, 1981

10(b)

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 2450
Law Docket No. Cum-80-48

BOARD OF OVERSEERS OF THE BAR

v.

FREDDIE F. LEE[1]

Argued: November 3, 1980
Decided: November 17, 1980

Before: McKUSICK, C.J., WERNICK, GODFREY, NICHOLS, CARTER and GLASSMAN, JJ., and DUFRESNE, A.R.J.

NICHOLS, J.

In a case novel in this jurisdiction as a challenge to the power vested by our Constitution[2] in the Supreme Judicial Court as one of the three co-equal branches of government, an attorney, Freddie F. Lee, disputes the right of the Supreme Judicial Court by promulgation of the Maine Bar Rules to require every attorney in active practice in our state to pay

---

[1] At all prior stages this proceeding bore the title "In re Freddie F. Lee." That was incorrect. Maine Bar Rule 7(e) provides for the filing of an information by the Board of Overseers of the Bar. That Board prosecutes the information. We have, therefore, changed the title of this case to the appropriate style.

[2] The Maine Constitution, Art. VI, § 1, provides:

> The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

//

an annual registration fee to the Board of Overseers of the Bar created thereunder.[3]

---

[3] Maine Bar Rule 10 was promulgated to take effect November 1, 1978, and provided:

> (a) Every attorney required to register in accordance with these rules, other than those on inactive status pursuant to Rule 6(c) and suspended attorneys, shall pay an annual fee as established by the Court, which shall be paid to the Board with the registration statement required by Rule 6.
>
> (b) Any attorney who fails to pay the fee required under subsection (a) of this rule within 30 days of its due date, shall be subject to a summary notice of suspension by the Board with the same effect as an order of suspension by a justice of the Court. An attorney aggrieved by any action taken by the Board under this section may apply to the Court, with notice to Bar Counsel, for summary relief for good cause shown.
>
> (c) Any attorney suspended under the provisions of subsection (b) above shall, prior to reinstatement, pay all arrears due from the date of his last payment to the date of his request for reinstatement, and shall also pay an additional reinstatement assessment of $75.00 unless excused from such reinstatement assessment by the Board as a result of its determination that to impose the same would result in a grave injustice under the circumstances.
>
> (d) The annual fee which shall be payable together with and at the time of initial registration by an attorney, shall be Fifteen Dollars ($15.00) for attorneys admitted to the practice of law in this State but conducting their practice primarily in another jurisdiction, and not maintaining an office here; and at the following rates for attorneys engaging in the practice of law in this state or

The facts of the case are uncontroverted. In 1979 Lee filed a registration statement with the Board, "under protest" as he said, but refused to pay the registration fee of $100 required annually of all active attorneys not under suspension. By letter Lee asserted that he should not be compelled "to join an association" in order to maintain his right to work as a lawyer and that the cost of lawyer discipline should be borne by those lawyers who are disciplined.

Upon his failure to pay this fee to the Board by June 1, 1979, Lee's name appeared on a list of attorneys which the Board had summarily suspended for failure to register and pay the registration fee, which list the Executive Secretary of the Board of Overseers of the Bar sent to the various clerks'

> maintaining an office here: Twenty-Five Dollars ($25.00) for those admitted to the bar of this State or any other jurisdiction for 3 or fewer years as of January 1 of that year; Twenty-Five Dollars ($25.00) for those admitted to the bar of this State or any other jurisdiction for more than 50 years as of such date; and one hundred dollars ($100.00) for all other attorneys.
>
> (e) The fees so paid, pursuant to the foregoing sections, together with any other source of funds made available to the Board, shall be used to defray the costs of attorney registration, disciplinary investigation, hearings and enforcement, expenses of fee arbitrations and for such other purposes as the Board, with the approval of the Court may determine.
>
> (f) The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition, and shall file a copy of such audit with the Court.

offices throughout the Maine court system. In August, 1979, the Board was alerted to the fact that Lee had continued to represent clients in court in matters in which he had previously been of counsel, notwithstanding his suspension.[4]

Upon recommendation of its Grievance Commission after hearing, the Board caused to be filed in the Supreme Judicial Court an information seeking the indefinite suspension of Lee from the practice of law. Maine Bar Rule 7(e)(6). At a hearing before a single justice of the Supreme Judicial Court, designated pursuant to Maine Bar Rule 7(e)(6) to hear this information, Lee admitted the factual allegations, and the parties submitted the issues of law to the single justice.

On May 29, 1980, the single justice issued an order, suspending Attorney Lee for non-payment of the registration fee until such time as he shall have paid all arrears required of him, plus the reinstatement assessment required of him pursuant to Maine Bar Rule 10(c). In that order the single justice ruled, however, that the Board of Overseers of the Bar lacked authority to itself summarily suspend an attorney although Maine Bar Rule 10(b) purports to confer that power upon the Board.

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[4] In a case of suspension or disbarment, Maine Bar Rule 7(n) makes possible an opportunity for the attorney to wind up for his clients matters pending on the entry date of the order and also provides that the suspended or disbarred attorney shall give prompt notice thereof both to his clients and, if litigation is pending, to the attorneys for adverse parties.

In appealing to this Court from that order suspending him from the practice of law, Attorney Lee attacks the pertinent bar rule on constitutional grounds. The Board has brought a cross-appeal, asserting that the Board's ordering of Lee's suspension from practice for non-payment of the registration fee was a ministerial act appropriately delegated to it by the Supreme Judicial Court.

On both the appeal and the cross-appeal we affirm the order of the single justice.

The circumstance that before the Supreme Judicial Court, sitting as the Law Court, the Defendant here challenges the constitutionality of a rule promulgated by the Supreme Judicial Court is unusual, but not without precedent. In State v. Kelly, Me., 376 A.2d 840, 844 (1977), the Law Court entertained and upheld an attack on the validity of a rule which the Supreme Judicial Court had promulgated. The situation is not dissimilar from a litigant's challenge to an advisory opinion rendered by the justices pursuant to the provisions of our state constitution.[5] It has long been recognized that such an opinion (which is the opinion of individual justices) is without precedential value; the Law Court is not bound by the advisory opinion when the same question may later be raised in a litigated case. Martin v. Maine Savings Bank, 154 Me. 259, 269, 147 A.2d 131, 137 (1958).

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[5] Me. Const., Art. VI, § 3.

The propriety of a challenge here to the validity of a rule in the promulgation of which certain present members of the Supreme Judicial Court, as rule-makers, may have joined, is in accord with the re-examination of federal rules which in appellate review of litigated matters is permitted in the United States Supreme Court. Hanna v. Plumer, 380 U.S. 460, 464 (1965). See also 4 C. Wright & A. Miller, Federal Practice and Procedure § 1030 (1969).

An analysis of the problem presented by this appeal must begin with recognition that at the foundation of our form of government there are three co-equal branches; and that our form of government, at the state as well as the federal level, embraces the doctrine of the separation of powers. In the Maine Constitution, Article III proclaims:

> Section 1. The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial.
>
> Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

Each of the three great "departments"[6] being independent and co-equal,[7]

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[6] Where our constitution refers to the three great departments of government, the reader must be careful to distinguish them from the "departments" or agencies which may from time to time be created within the executive department.

[7] The doctrine of separation of powers which the founding fathers made so explicit in our state constitution is only implicit in the federal constitution.

it follows that they are "severally supreme within their legitimate and appropriate sphere of action." Ex parte Davis, 41 Me. 38, 53 (1856).

From this concept of separation of powers there is derived the inherent power of the Supreme Judicial Court. It is a fundamental principle of constitutional law that each department in our tri-partite scheme has, without any express grant, the inherent right to accomplish all objects necessarily within the orbit of that department when not expressly allocated to, or limited by the existence of a similar power in, one of the other departments. The inherent power of the Supreme Judicial Court, therefore, arises from the very fact that it is a court and connotes that which is essential to its existence and functioning as a court.[8] Petition of Florida State Bar Ass'n, Fla., 40 So.2d 902, 905-06 (1949); In re Integration of Nebraska State Bar Ass'n, 133 Neb. 283, 275 N.W. 265, 114 A.L.R. 151 (1937).[9]

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8 Conversely, the judicial department may not interfere with the exercise of power by the executive or legislative departments within its own constitutional sphere. See Bar Harbor Banking & Trust Company v. Alexander, Me., 411 A.2d 74, 76 (1980).

9 It is of interest to note that in an opinion of the Maine attorney general, as yet unpublished, dated September 30, 1975, rendered to the commissioner of the department of finance and administration with a copy to the governor, that officer observed that it was "widely held" that courts have an inherent power to order payment of reasonable amounts necessary to perform the judicial function, and he cited the annotation "Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes." 59 A.L.R.3d 569 (1974).

Attorneys are officers of the court and as such constitute an important part of the judicial system. The power to define and regulate the practice of law naturally and logically belongs to the judicial department. The admission and disbarment of attorneys is the ultimate exercise of that power and is a judicial act. In re Secombe, 60 U.S. (19 Howard) 9, 13 (1856); Laughlin v. Clephane, 77 F. Supp. 103, 105 (D.D.C. 1947).

The Supreme Judicial Court has inherent power, not only to regulate the conduct of attorneys as officers of the court, but also to impose upon them as a precondition to receipt of a license to practice such registration fees as are reasonably required to enable the Court to carry out its responsibilities.

The fact that the ultimate power to regulate the conduct of attorneys is inherently in the judicial department[10] does not mean that other departments of government cannot also in some respects act in such an area as this. We note, for example, that the Legislature has conferred upon the attorney general authority to prosecute in the Supreme Judicial Court an attorney charged with con-

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[10] On inherent judicial power see generally Jeffers, "Government of the Legal Profession: An Inherent Judicial Power Approach," 9 St. Mary's L. J. 385 (1978); Kalish, "The Nebraska Supreme Court, The Practice of Law and the Regulation of Attorneys," 59 Neb. L. Rev. 555 (1980); Robertson and Buehler, "The Separation of Powers and the Regulation of the Practice of Law in Oregon," 13 Willamette L. J. 273 (1977); Note, "Judicial Financial Autonomy and Inherent Power," 57 Cornell L. Rev. 975 (1972); Note, "The Inherent Power of the Judiciary to Regulate the Practice of Law -- A Proposed Delineation," 60 Minn. L. Rev. 783 (1976).

ducting himself in a manner unworthy of an attorney. 4 M.R.S.A. §§ 851-856. This authority remains an alternative to the adjudication of attorney disciplinary matters pursuant to the Maine Bar Rules.

In addition, the Legislature has enacted certain statutes relating to the admission and reinstatement of attorneys, which statutes the Supreme Judicial Court honors as a matter of comity, but not in surrender of its inherent power.[11] Application of Feingold, Me., 296 A.2d 492, 496 (1972). See also Barnes v. Walsh, 145 Me. 107, 110-11, 72 A.2d 813, 815 (1950).

The police power is generally considered to be vested in the legislative department, but it is not the exclusive power

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11 The doctrine of inherent judicial power has found application in a variety of areas related to the judicial process. There have been instances in which state courts have had to resort to their inherent power to compel allocation of public funds to the judicial department. Judges for Third Judicial Circuit v. County of Wayne, 386 Mich. 1, 190 N.W.2d 228, 233 (1971).

Under this doctrine it has been recognized that courts have even broader power to administer funds than to compel initial judicial financing. In Washington that state's Supreme Court has extended to the unified bar the court's power to administer its funds without legislative or executive interference. Matter of Washington State Bar Ass'n, 86 Wash.2d 624, 548 P.2d 310, 316 (1976), and in Minnesota a statute was invalidated that provided that all attorney registration fees be removed from their restricted account and be placed in the general fund. Sharood v. Hatfield, 296 Minn. 416, 210 N.W.2d 275, 282 (1973).

The Oregon court also has invoked the doctrine of inherent judicial power in the area of court procedure when it struck down as an undue burden on the judiciary a new statute relating to the removal of a judge from a particular case. State ex rel. Bushman v. Vandenberg, 203 Or. 326, 337-38, 280 P.2d 344, 348 (1955).

of that department. The police power may on occasion be exercised by the courts. Petition of Florida Bar Ass'n, supra, at 906. The promulgation of Maine Bar Rule 10 is such an occasion.

Attorney Lee has challenged our bar rules as violating his constitutional rights to due process and to equal protection of the laws. Me. Const., Art. I, § 6-A; U. S. Const., Amend. XIV. Under our bar rules the offending attorney is accorded both notice and an opportunity to be heard. These are of the essence of due process. Peaslee v. Pedco, Inc., Me., 388 A.2d 103 (1978). See also Bennett v. Oregon State Bar, 256 Or. 37, 470 P.2d 945, 53 A.L.R.3d 1291 (1970).

In Buschbacher v. Supreme Court of Ohio, No. C-2-75-743, 75-751, 76-309 (S.D.Ohio 1976), aff'd sub nom. Cuyahoga County Bar Ass'n, et al. v. Supreme Court of Ohio, 430 U.S. 901 (1977), the United States Supreme Court upheld the constitutionality of a rule of the Ohio court which required practicing attorneys to register and pay a biennial fee in the face of charges of violation of procedural due process, substantive due process and equal protection of the laws.

In Tennessee a court rule providing for annual registration of attorneys and payment by them of an annual license fee has withstood a challenge on grounds of denial of the constitutional guarantees of due process and equal protection. Ables v. Fones, 587 F.2d 850 (6th Cir. 1978).

Attorney Lee has presented no evidence whatsoever that the classification of attorneys made in Maine Bar Rule 10 for fixing the amount of the annual registration fee is an arbitrary one. His challenge on that ground, therefore, requires no further attention by this Court.

In his challenge to Maine Bar Rule 10 Attorney Lee goes further than the constitutional issues discussed above and urges that the rule promulgated by the Supreme Judicial Court offends as well the following provisions of our state constitution:

> No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature. Me. Const., Art. I, § 22.

> Bills, orders or resolutions, may originate in either House, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases: provided, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue. Me. Const., Art. IV, Part 3, § 9.

> The Legislature shall never, in any manner, suspend or surrender the power of taxation. Me. Const., Art. IX, § 9.

Maine Bar Rule 10 is not a bill for imposing a tax or for raising a revenue. It imposes upon attorneys a registration fee, which under subdivision (e) of that rule is to be used to defray the costs of attorney registration, disciplinary investi-

gation, hearing and enforcement, expenses of fee arbitrations and for such other purposes as the Board with the approval of the Court may determine.

A tax, as our Court observed more than a century ago, is a charge either to raise money for public purposes or to accomplish some governmental end. Brewer Brick Co. v. Brewer, 62 Me. 62, 70 (1873). When the exactions, however, are not imposed for the main purpose of revenue, but are imposed in the exercise of a police power and as part of a program for the regulation of a particular business, occupation or profession, the levies are license fees and not taxes. Utter v. State, 571 S.W.2d 934, 937 (Tex. Cr. App., 1978); Pittsburgh Milk Co. v. City of Pittsburgh, 360 Pa. 360, 62 A.2d 49, 52 (1948); Brackman v. Kruse, 122 Mont. 91, 199 P.2d 971, 977 (1948); City of Coos Bay v. Aerie No. 538 of Fraternal Order of Eagles, 179 Ore. 83, 170 P.2d 389, 396 (1946).

The common distinction between taxes and license fees is that taxes are primarily intended to raise revenue while license fees are part of a regulatory program and are intended to cover costs of administering such a program under the police power of government. City of Philadelphia v. Southeastern Pennsylvania Transportation Authority, 8 Pa.Commw.Ct. 280, 287, 303 A.2d 247, 251 (1973). The test is the purpose of the assessment and not its effect. Beckendorff v. Harris-Galveston Coastal Subsidence District, 558 S.W.2d 75, 79 (Tex. Civ. App.,

1977).

When the Delaware court provided by rule a clients' security fund and required lawyers to make a stated contribution to that fund, the rule was challenged as the levying of a tax. That court replied:

> The short answer to this contention is that the payment required is an assessment and not a tax. We have held that we have the power to order the creation of the Fund and, that being so, it necessarily follows that we have the power to direct the imposition of a reasonable assessment to accomplish the purpose. In re Member of Bar, Del.Supr., 257 A.2d 382, 385 (1969); app. den. sub nom. Re Reed, 396 U.S. 274 (1970)

This appeal presents an issue which is resolved by thus defining the distinction between a tax and a license fee. We see no reason for using any other definition in the case at bar.

The power to regulate the practice of law carries with it the power to impose a charge upon attorneys to fund such regulation. Petition of Florida Bar Ass'n, supra, at 906-07.

When in Mississippi a similar challenge was mounted against an annual assessment against every member of the bar in that state, it was held that this levy was a proper one, because the court was vested with inherent disciplinary jurisdiction, and it was further held that the funds thus provided might properly be deposited in a special account and used exclusively for the disciplinary activities and agencies. Matter of

Mississippi State Bar, 361 So.2d 503, 506 (Miss. 1978).

We conclude that the disciplinary action taken against this attorney does not offend any provision of either the Maine Constitution or the United States Constitution.

There remains the issue raised by the cross-appeal of the Board of Overseers of the Bar.

A century ago this Court observed that the power of removal from one's office as an attorney and counselor at law was a judicial power, to be exercised by a sound judicial discretion. Sanborn v. Kimball, 64 Me. 140, 147 (1875).[12]

We have had occasion, however, when the act was a ministerial one, as distinguished from a judicial act, to recognize that such a responsibility could be delegated.

Illustratively, M.R.Civ.P. 58 directs that where a party recovers only money damages, or nothing at all, after the pronouncement of that judgment (which is a judicial act), the clerk shall enter that judgment forthwith on the docket (which is a ministerial act). See Weedon v. Gaden, 419 F.2d 303, 306 (D.C.Cir. 1969).

Similarly, under M.R.Civ.P. 55 the clerk is authorized to enter a default when it is evident that a party against whom

[12] See also Ex parte Burr, 22 U.S. (9 Wheat.) 529, 530 (1824).

judgment for affirmative relief is sought has failed to plead or otherwise defend; and when the claim is for a sum certain or for a sum which by computation can be made certain the clerk is authorized to enter judgment by default. Here, too, the function of the clerk is purely ministerial. Downing v. O'Brien, Me., 325 A.2d 526, 527 (1974).

The rule-makers could have made the suspension an automatic one and delegated to an agent the ministerial task of suspending an attorney who failed to make the payment of the registration fee required of him. The difficulty with the present Maine Bar Rule 10(b) is that by using the words "subject to" the rule-makers have left ambiguous whether or not the Board of Overseers of the Bar was to exercise a judicial discretion in deciding in a given case whether the attorney was to be suspended. This was inappropriate.

The single justice found the purported suspension by the Board to be invalid.[13] We agree for the reason to which we have just adverted. He correctly acted himself to suspend Attorney Lee for failure to pay the validly prescribed registration fee for Maine attorneys. By the express terms of that order Attorney Lee can at any time terminate his suspension by paying all arrears in payment of the registration fee and the $75 reinstatement fee as required of him by Maine Bar Rule 10(c).

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[13] Since the attorney's suspension was invalid, he could not be the subject of discipline for practicing law in June and July, 1979.

The entry will be:

Appeal denied.

Judgment affirmed.

No costs allowed to either party.

All concurring.

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NOTICE: This opinion is subject to formal revision before publication in the Maine Reporter. Readers are requested to notify the Reporter of Decisions, Box 368, Portland, Me. 04112, of any typographical or other formal errors before the opinion goes to press.

NOT TO BE PUBLISHED IN THE MAINE REPORTER

STATE OF MAINE
SUPREME JUDICIAL COURT

STATE OF MAINE
SUPREME JUDICIAL COURT
MAY 30 1980
RECEIVED AND FILED

Docket No. SJC-53.6

IN RE FREDDIE F. LEE) DECISION AND ORDER

Pursuant to Rule 4(d)(8) of the Maine Bar Rules, the Board of Overseers of the Bar filed an information charging Freddie F. Lee of East Baldwin with practicing law in violation of the Maine Bar Rules. Lee filed an answer in which he generally admitted the allegations contained in the information. At hearing before the court on April 10, 1980, the parties submitted the issues to the court on the pleadings and indicated there were no factual disputes. Lee appeared pro se and Michael E. Barr, Esquire, appeared as Bar Counsel.

Lee concedes that in February, 1979, he registered with the Board of Bar Overseers as required by the Maine Bar Rules and at that time specifically refused to pay the fee required under Rule 10. He acknowledges receipt of a letter from Bar Counsel, dated May 18, 1979, notifying him of a summary suspension under Rule 10 by the Board of Overseers, effective June 1, 1979, for failure to pay the registration fee. He admits that he appeared in the Bridgton District Court on June 4, 1979, and again on July 9, 1979. He asserts that his failure to appear before the Grievance Commission at Bangor on November 20, 1979, was because

the hearing was scheduled at a location more than three hours' drive from his residence in Sebago, Maine.[1]

Lee justifies his refusal to pay the registration fee on the grounds that under art. I, § 22 of the Maine Constitution, the Supreme Judicial Court has no constitutional power to levy a tax or duty.[2] He attacks the fee schedule as being an unjustified denial of equal protection. He also suggests that the Board of Overseers lack the authority to summarily suspend his right to practice law.

Bar Counsel concedes that Lee properly registered in accordance with the Maine Bar Rules and notified the Board of Overseers at that time of his refusal to pay the registration fee. Bar Counsel also concedes that as of August, 1979, Lee had notified any clients of his suspension and that he had engaged only in those matters that were scheduled for hearing at the time of his suspension . Bar Counsel seeks not only an order affirming the summary suspension by the Board of Overseers for nonpayment of the registration fee but also an indefinite suspension for the unlawful practice of law in violation of the Maine Bar Rules subsequent to Lee's summary suspension.

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1. We noted at the hearing that one member of the panel lives in Port Fairfield, more than three hours' drive in the opposite direction.

2. Section 22 reads: "No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature."

I. Rule 10(a)

The constitutional vesting of judicial power in the Supreme Judicial Court carries with it inherent power over the admission and discipline of attorneys within the State of Maine. Application of Peingold, Me., 296 A.2d 492, 496 (1972); Barnes v. Walsh, 145 Me. 107, 72 A.2d 813 (1950); Sanborn v. Kimball, 64 Me. 140, 146 (1875). The same principle has been applied by the U.S. Supreme Court and other states. E.g., Ex parte Burr, 22 U.S. (9 Wheat) 529 (1824); In re Mackay, Alaska, 416 P.2d 823, 837 (1964), and cases cited therein. The power of the courts to control the conduct of the bar was established early in the history of the English courts and was beyond question at the time of our Constitution. See People v. Culkin, 248 N.Y. 465, 162 N.E. 487 (1928)(Cardozo, J.).

After extensive investigation and hearings, the Supreme Judicial Court concluded that it was necessary in the exercise of its power to control the activities of attorneys to create the Board of Overseers, and to impose an annual registration fee upon attorneys admitted to practice in order to underwrite the expense of the Board of Overseers. We cannot say that the registration fee imposed under Rule 10 is a violation of art. I, § 22 of the Maine Constitution.[3]

The court's inherent power over the discipline of the bar

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3. The Supreme Judicial Court also sets fees for the District Court, 4 M.R.S.A. § 175, as amended by P.L. 1979, ch. 425, § 1, and the Superior Court, 4 M.R.S.A. § 555, as amended by P.L. 1980, ch. 663, § 10.

includes of necessity, the power to secure adequate financing to carry out its disciplinary responsibilities. The assessment of a registration fee for the expenses of administration of the Maine Bar Rules is not a "tax or duty" within the meaning of art. I, § 22, it is a fee charged for the cost of regulation. The fee is annually adjusted by the court to reflect the actual operating expenses of the Board of Overseers of the Bar. This distinction between a regulatory fee and a tax for revenue purposes was applied by the Florida Supreme Court in a decision holding that the court's inherent power to create a unified bar carries with it the power to impose a membership fee. Petition of Florida State Bar Ass'n, Fla., 40 So.2d 902, 906-907 (1949). The court found that the membership fee could not "on any sound basis be construed as a tax." Id. at 906. The court also said:

> It would not be possible to put on an integrated bar program without means to defray the expense. We think the doctrine of implied powers necessarily carries with it the power to impose such an exaction.

Id. at 906-907.

In Matter of Mississippi State Bar, Miss. 361 So. 2d 503, 506 (1978), the Mississippi Supreme Court said:

> This Court's duty to protect itself, the judiciary, and the citizens of this State from persons unfit to practice law ... should not be hampered by the absence of adequate financing to do the job, and the ability to secure such financing should not be dependent upon the will of a department or entity other than the entity upon which the ultimate burden rests, namely, this Court.
>
> (Statutory citation omitted.)[4]

4. In Mississippi, the bar disciplinary agencies were created

The Rhode Island Supreme Court has rejected the argument that a membership fee in a unified bar is an unconstitutional tax, distinguishing a "tax designed to raise revenue" and a "licensing fee." Petition of Rhode Island Bar Association, R.I., 374 A.2d 802, 803 (1977).

Without any evidence other than respondent's exhibit A and without any empirical data, we cannot say that the categories of fees provided by Rule 10 of the Maine Bar Rules are so inherently arbitrary as to constitute a violation of equal protection. A party attacking a statute as an unconstitutional violation of equal protection bears the burden of proving that the statute's classifications have no rational basis. Union Mutual Life Ins. Co. v. Emerson, Me., 345 A.2d 504, 507-508 (1975). The same principle applies to this challenge to a rule of the Supreme Judicial Court.

II. Rule 10(b)

We note that the information alleges that the respondent was summarily suspended by the Board of Overseers on June 1, 1979. Rule 10(b) provides that such a summary suspension shall have the same effect as an order of a Justice of the Supreme Judicial Court. Rule 7(n) provides that an order of a justice shall be effective 30 days after entry. It appears from one of the allegations

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and codified by statute for the purpose of "assisting [the] Court in administering its exclusive and inherent disciplinary jurisdiction." 361 So. 2d at 505, citing § 73-3-301 et seq., Mississippi Code Annotated.

contained in the information that Lee engaged in the practice of law on June 4, 1979, within the 30-day period provided by Rule 7(n). The second allegation of practice on July 9, 1979, is, however, beyond the 30-day period.

This court has no reason to question the sincerity of Lee's belief that the registration fee was an unconstitutional requirement. We have no reason to believe that he has acted other than in good faith. His explanation of his failure to seek a judicial determination of the validity of his belief was that he lacked the resources to conduct such litigation. We find this a flimsy excuse, inadequate to justify a flagrant violation of the Maine Bar Rules.

We must, however, consider the question of whether or not the Supreme Judicial Court may constitutionally delegate to the Board of Overseers of the Bar the authority to suspend attorneys from the practice of law.[5] The Law Court has said:

> "An attorney at law is an officer of the court ... . The order of his admission to the bar is the judgment of the court that he possesses the requisite legal qualifications and good moral character to entitle him to practice the profession of an attorney at law. From the moment of his entrance upon the duties of his office, he becomes responsible to the court for his official misconduct. The tenure of his office is during good behavior, and he can only be deprived of it for misconduct ascertained and determined by the court after opportunity to be heard has been afforded. ...
>
> ... For his official misconduct there is no power of removal but in the court. This power is at once necessary to protect the court, preserve the purity of the administration of justice, and maintain the integrity of the bar. ...

5. Since summary suspension under Rule 10(b) is for an indeterminate period, we perceive no significant distinction between suspension and disbarment.

> . The power of removal is a judicial power, to be exercised by a sound judicial discretion ... .

Sanborn v. Kimball, 64 Me. 140 145-147 (citations omitted). See also Barnes v. Walsh, 145 Me. at 110, 72 A.2d at 813.

In Ex parte Burr, supra, the United States Supreme Court, deciding a different issue from that presented here, said:

> On one hand, the profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. For these objects, some controlling power, some discretion, ought to reside in the court. ...[N]o other tribunal can decide, in a case of removal from the bar, with the same means of information as the court itself.

22 U.S. at 529.

Most states which have created bar disciplinary agencies, in the form of either a unified bar or some other body, appear to have retained in the courts the ultimate decision on disbarment, as is the case under Maine Bar Rule 7 for disbarment on grounds other than failure to pay the registration fee. The recommendations or decisions of bar disciplinary bodies are generally not binding on courts. E.g., In re Mackay, 416 P.2d at 830 (Alaska); Re Brown, 101 Ariz. 178, 416 P.2d 975 (1966); Greenbaum v. State Bar, 15 Cal.3d 893, , 126 Cal. Rptr. 785, 544 P.2d 921, 927 (1976); District of Columbia Court of Appeals v. Kleindienst (D.C.App.) 345 A.2d 146, 147 (1975); Petition of Rhode Island Bar Association, supra. Some states have delegated the power of disbarment to a body operating as a

quasi judicial forum, subject to review by the state Supreme Court. E.g., Petition of Florida State Bar Association, 40 So.2d at 907-908.

There are a number of cases holding that the power of courts over disbarment and qualification to practice is exclusive of interference from other branches of government. In Application of Feingold, supra, the Law Court stated that in matters relating to admission or disbarment of attorneys,

> the judicial branch of the government, acting through the courts has exclusive jurisdiction and the legislative branch ... can in no way limit this inherent power and authority of the court.

296 A.2d at 496. See also, e.g., R. J. Edwards, Inc. v. Hert, Okla., 504 P.2d 415 (1972); In re Saddler, 35 Okla. 510, 130 P. 906 (1913); People v. Buckles, Colo., 453 P.2d 406 (1969). These cases support our belief that disbarment is a judicial function that must be exercised only by the courts.

In conclusion, it is our belief that this responsibility of the court cannot be delegated even to a board created by order of the court and that a summary suspension can be accomplished only on order of a Justice of the Supreme Judicial Court. We do not feel that the June 1, 1979, order of the Board of Overseers was effective to terminate Lee's right to practice law.

We recognize that Lee's conduct constitutes a serious departure from the requirements of members of the bar to comply with the Maine Bar Rules. We do not in any way condone Lee's conduct in ignoring the clear requirements of the rule. We do not consider,

however, that the implementation of the Maine Bar Rules is seriously threatened in light of the fact that Lee, since July 9, 1979, has complied with the order of suspension.

This court does have before it Lee's complete and continuing refusal to pay the registration fee required by the Maine Bar Rules. The continuing protection of the public and the courts requires that Lee be suspended until such time as he complies with Rule 10, Maine Bar Rules.

It is therefore ORDERED that respondent, Freddie F. Lee, be and he is hereby suspended as an attorney and counselor at law in all courts of this state, said suspension commencing immediately and continuing until such time as he shall have paid the registration fee required by Rule 10 of the Maine Bar Rules, all arrears due to the date of request for reinstatement, and the additional reinstatement assessment under Rule 10(c) unless excused by the Board of Overseers.

Dated: May 29, 1980.

DAVID G. ROBERTS
JUSTICE, SUPREME JUDICIAL COURT

STATE OF MAINE
CLERK OF THE COURT
MAY 30 1980
RECEIVED AND FILED

BOARD OF OVERSEERS OF THE BAR
Established by the Supreme Judicial Court of Maine

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GRIEVANCE COMMISSION

REPORT OF PROCEEDINGS

Re: Freddie Lee

No. 79-106

20 November 1979

This is a report of a hearing before the Grievance Commission in this matter held in Bangor, Maine, on 20 November 1979.

Preliminary

This complaint arose as a result of a letter from Judge Donald C. Alexander of the Maine District Court. Mr. Lee appeared in that court on the 4th of June and the 9th of July, 1979, after he had been suspended from the practice of law for failing to register and pay the fee as required under the Maine Bar Rules. On September 28, 1979, Bar Counsel instituted proceedings before the Commission by preparing and filing a petition. A certified mail return receipt introduced into evidence before the Commission shows that the petition was recived by Mr. Lee on September 29, 1979. By a notice dated October 22, 1979, Bar Counsel notified the respondent that a hearing on the matter would be held on November 20, 1979, at the offices of Mitchell, Ballou & Keith, One Merchants Plaza, Bangor. A certified mail return receipt introduced into evidence before the Commission shows that the notice of hearing was received by the respondent. The exact date of delivery does not appear on the receipt. On October 24, 1979, the respondent, Mr. Lee, filed a "response" to the petition. The Commission file shows that it was received by the Chairman of the Commission on October 25, 1979. By a letter dated November 16, 1979, the respondent requested that the hearing scheduled for the 20th be continued and re-scheduled for Portland. This letter was received by

the Chairman of the Commission on the 17th of November, a Saturday. The matter could not be discussed with Bar Counsel until the following Monday, the day before the scheduled hearing. The Chairman called Mr. Lee on Monday afternoon to discuss the matter. In view of the fact that the allegations in the petition are admitted by the respndent, and that, acording to Bar Counsel, the matter of the scheduling of the hearing for Bangor was discussed with Mr Lee several weeks ago, the Chairman decided that the hearing should proceed as scheduled. Mr. Lee was so advised by the Chairman and he was invitd to attend the Bangor hearing as scheduled.The hearing was held before Panel A of the Commisssion consisting of Messrs. Aycob, Hayes and Ballou. This panel had previously been designated by the Chairman of the Commission to sit and act for the Commission in the exercise of the authority and duties of the Commission, all in accordance with Rule 7(b)(2) of the Maine Bar Rules.

Report of Hearing

Mr. Lee did not appear at the hearing in person or by counsel. Bar Counsel introduced evidence showing the filing and serving of the petition and of the notice of hearing. The "response" served and filed by the respondent were read by the panel. Bar Counsel then presented various items of documentary evidence including Judge Alexander's original complaint; copies of several letters written by the respondent in August of 1979 to certain clients of his indicating that he could no longer act as their attorney and outlining the reasons why he had registered but had refused to pay the required fee; and the original Registration Statement filed by the respondent with the Board of Overseers in February of 1979 and the accompanying letter stating that no fee was enclosed. Bar Counsel testified that the respondent has not paid the registration fee required under the terms of the Maine Bar Rules, particularly Rule 10.

Findings

The evidence presented to the Commisssion shows clearly that there is no dispute about the fact that Mr. Lee did not pay the fee required of him under the Maine Bar Rules and hence had not complied with those Rules. The Rules state that an "attorney who fails to pay the fee required (by Rule 10(a)) shall be subject to a summary notice of suspension by the Board with the same effect as an order of suspension by a justice of the Court." In this case, the

respondent was one of those summarily suspended by the Board for non-payment of the fee. This, too, is not disputed by the respondent. It is also clear that Mr. Lee appeared in Maine District Court as an attorney on two occasions after he had been suspended. It is a reasonable inference that the respondent knew that he had been suspended and nevertheless appeared in Court as an attorney thereafter.

The allegations of the petition are therefore established and the Commission concludes that the respondent has conducted himself in a manner unworthy of an Attorney and Counselor at law. We may ask, as indeed the Commission did at the hearing, why does anything further have to be done since Mr. Lee has already been suspended as an attorney? Bar Counsel called the Commission's attention to the fact that an attorney suspended summarily under Rule 10(b) automatically may become reinstated by paying the requisite fee and the reinstatement fee provided for under Rule 10(c). It is the opinion of the Commission that disciplinary action is warranted in this case because of the act of the respondent in continuing to practice law after he had been suspended. Summary suspension under Rule 10(b) does not constitute disciplinary action. The main thrust of respodent's position as set forth in his "response" and in the other documents received in evidence is that the Court had no authority to require the registration of attorneys and that the Rules are so vague that the respondent could not ascertain the wrong with which he is charged. Obviously it is not the role of this Commission to pass judgement on those sorts of issues. Suffice it to say that there is nothing vague or uncertain about the registration and fee requirments of Rule 10. Mr. Lee obviously knew what he was required by that Rule to do and he deliberately chose not to comply with its terms. And he proceeded to practice law when his right to do so had been suspended.

Determination

The Commission, by unanimous vote of Panel A thereof, determines that this matter should be concluded by the indefinite suspension of the respondent from the practice of law by the Court, and directs the Bar Counsel on its behalf to report this determination to the Board of Overseers and to file with the Clerk of the Law Court an information seeking such suspension together

with the entire record of these proceedings.

Dated: 23 November 1979

Respectfully submitted,

John W. Fallou

Chairman, Panel A

STATE OF MAINE
CUMBERLAND, SS.

FOR YOUR INFORMATION

SUPREME JUDICIAL COURT
DOCKET NO.

IN RE: FREDDIE F. LEE

INFORMATION

The Board of Overseers of the Bar, acting through Bar Counsel, charges that:

1. On September 23, 1974 Freddie F. Lee of East Baldwin, Cumberland County, and State of Maine was an attorney and counselor at law duly admitted to practice in this Court and in the other courts of this State.

2. On June 1, 1979 the Respondent was summarily suspended from the practice of law by order of the Board of Overseers of the Bar for failure to pay the registration fee pursuant to Maine Bar Rule 10.

3. On June 4, 1979 the again on July 9, 1979, the Respondent appeared before Judge Donald G. Alexander in the Bridgton District Court representing a client on a divorce matter. The Respondent also filed a Motion with the Court during this period of time. The Respondent knew his appearances to be in violation of his suspension by the Board of Overseers of the Bar.

4. The Respondent has refused, and continues to refuse, to pay the assessment required pursuant to Maine Bar Rule 10.

5. Pursuant to Maine Bar Rule 7(e) and upon a Petition filed by Bar Counsel setting forth the above allegations as charges of alleged misconduct, on November 20, 1979 the Grievance Commission

held a formal disciplinary proceeding, determined that the said Freddie F. Lee should be indefinitely suspended from the practice of law, reported that determination to the Board of Overseers of the Bar, and caused to be filed with the Executive Clerk of this Court this Information together with the entire record of its proceedings.

6. The Respondent, as demonstrated by his conduct above, violated his plain duty as an attorney and counselor at law which duty is inherent in that office and is reflected in Maine Bar Rule 3.2 (a)(1) which states:

> "A lawyer shall not practice law in a jurisdiction where to do so would be in violation of law of court rule."

And in Maine Bar Rule 3.2(a)(3) which states:

> "A lawyer shall not aid any person, association, or corporation in the unauthroized practice of law."

And in Maine Bar Rule 3.2(f)(1) which states:

> "A lawyer shall not directly or indirectly violate, circumvent, or subvert any provision of the Maine Bar Rules."

Dated: December 20, 1979

s/Michael E. Barr

Michael E. Barr, Bar Counsel
Board of Overseers of the Bar
P.O. Box 1820, Whitten Road
Augusta, Maine 04330

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO. SJ C-53.6

IN RE:

FREDDIE F. LEE

RESPONDENT'S ANSWER

Freddie F. Lee, Respondent herein, respectfully files this his responsive pleading to the information filed by Bar Counsel on behalf of the Board of Overseers of the Bar, as follows:

1. Respondent admits the allegations of Paragraph 1 of said information.

2. Respondent admits that he received a letter from Michael E. Barr, as Bar Counsel, the letter purportedly "serving as a summary notice of suspension", and being dated May 18, 1979. However, Respondent denies that Bar Counsel had the authority to perform the act of "summary suspension", or that the Board of Overseers of the Bar had the authority to perform the act of "summary suspension" for the failure to pay an unlawful assessment. I have never voted for such an assessment and the fact of having a license to practice law does not by implication cast an affirmative vote for such an assessment.

3. Respondent admits the appearance before Judge Alexander in the Bridgton District Court representing a client on a divorce matter, and the filing of the motion in the same case for the purposes as stated in my letter to the Board of Overseers of the Bar dated August 16, 1979 a copy of which is attached hereto and made a part hereof, but denies that the appearances were a "violation of his suspension" for the reasons set out herein as to the authority to assess and/or to suspend.

4. Respondent admits that he has refused and still refuses to pay the illegal assessment.

5. Respondent admits that the "Grievance Commission" or one segment of it located in Bangor, Maine, over three (3) hours drive from Respondent's residence in Sebago, Maine, and place of employment in Portland as a Field Advisor and Examiner for the Maine Department of Manpower Affairs, Employment Security Commission, held a hearing of some type over Respondent's objections and request for transfer of

proceedings to a location more convenient for Respondent to attend and to present any witnesses if desired. However, since Respondent was effectively barred from attendance at such hearing he cannot admit nor deny the remaining allegations in Paragraph 5 of the Information.

6. Respondent specifically and vehemently denies that his conduct in any manner violated his duties as an attorney and counselor at law as alleged in Paragraph 6 of the Information, all for the reasons as set out in his response to the Board of Overseers of the Bar dated October 24, 1979 and the attached letters dated August 16, 1979 and February 26, 1979 copies of all of which have been attached hereto and are incorporated herein by reference.

WHEREFORE, Respondent prays the Court to determine it did not on May 18, 1979 nor does it now have the power to tax, and that the alleged "suspension" was unlawful and that Respondent has not acted in a manner unworthy of an attorney, and that no disciplinary action be imposed.

Dated January 31, 1980.

FREDDIE F. LEE

Freddie F. Lee

Respondent
Route 107 (Sebago)
East Baldwin, Maine 04024
787-3367

CERTIFICATE OF SERVICE

I, Freddie F. Lee, hereby certify that a true and correct copy of the foregoing Respondent's Answer was served on Michael E. Barr, Bar Counsel, by placing same in the United States mail addressed to him at P.O. Box 1820, Augusta, Maine 04330 on the 31st day of January 1980.

Freddie F. Lee

Freddie F. Lee

February 26, 1979

Board of Overseers of the Bar
P.O. Box 1820
Augusta, Maine 04330

Gentlemen,

I am enclosing a "registration" form which is being filed under protest.

I do not enclose a "fee" because I do not feel that I should be compelled to join an association for the right to work as a lawyer.

I only work part-time as a lawyer and after considering my overhead my law practice resulted in a loss in 1978. If the major purpose of this program is to supervise the ethical conduct of attorneys and to resolve fee disputes, I feel those are costs which should be born by those attorneys against whom complaints are made and those who become involved in fee disputes.

Sincerely,

Freddie F. Lee

FFL/bl

Encl. 1

Freddie F. Lee
ATTORNEY AT LAW
DOUGLAS HILL, MAINE 04023
787-3367

August 16, 1979

Board of Overseers of the Bar
Whitten Road
P.O. Box 1820
Augusta, Maine 04330

Attention: Michael E. Barr

Dear Mr. Barr,

Apparently my letter which accompained the registration form was ignored or given the "File 13" treatment. I have filed a registration form even though I knew the State of Maine had all of my history at the time my license to practice law in Maine was issued. I did not pay the annual registration fee because I, as well as the Maine State Legislature, am opposed to the compulsion of its citizens to join a "union" for the right to work. I feel neither you, nor the Board of Overseers of the Bar have the right or authority to summarily suspend my right to practice law under a license signed by the Governor of the State of Maine and issued under the appropriate statutory requirements.

There has been no law passed by the Maine State Legislature which provides for the suspension of my right to practice under such license for my failure to pay a "debt" to the Board. The Supreme Judicial Court of Maine does not have the authority to "tax" a particular segment of the population and call it regulating the practice of law.

You may wish to make an example of me and if such is your desire then so be it. I did not realize my failure to pay a fee which I could not afford and against the payment for which I had strong feelings of principle constituted such a dire threat to the entire bar of the State of Maine. My name has even been stricken from the rolls of the State Bar Association for my failure to pay dues for 1978.

Though I don't feel that I owe an explanation to you or anyone else for my appearance in the Bridgton Court I will explain as follows:

I had filed a divorce for Sandra Ann Murphy in late 1978 and my fee had been paid in full by my client long before the court appearance. Due to procedural rules I was unable to present the divorce until June 4, 1979 which setting had been made by the Court Clerk three weeks before.

Judge Alexander's ruling at that hearing and a subsequent necessary motion to set aside and to amend the petition were filed, which was granted and another hearing date of July 9, 1979 was obtained. I felt a commitment to my client and I did not intend to cause her extra grief and expense of

hiring another attorney and delaying the matter further. If this is conduct which would be construed as "unethical" or "unauthorized practice of law" then you can take the practice of law in Maine and jam it.

I have also appeared in the Cumberland Superior Court before Judge Glassman on July 3, 1979 on a Pre-trial conference which was set by the Court and not by me.

Recently, I forwarded to your office copies of letters written to my clients on the cases pending in the Courts by which I withdrew as their attorney, which copies I'm sure you have received by now.

Sincerely,

Freddie F. Lee

FFL/bl

STATE OF MAINE

IN RE: FREDDIE F. LEE
of East Baldwin,
County of Cumberland,
State of Maine

BOARD OF OVERSEERS OF
Grievance Commission
File #79-106

RESPONSE

To the Grievance Commission of the Board of Overseers of the Bar:

Now comes Freddie F. Lee, herein referred to as Respondent and makes response to the petition filed against him by Michael E. Barr, acting as Bar Counsel to the Board of Overseers of the Bar, such answer being as follows:

1. Respondent admits receiving a letter from the Board of Overseers of the Bar dated May 18, 1979, purporting to summarily suspend a Freddie F. Lee from the practice of law effective on June 1, 1979 for failure to file a registration statement and/or failure to pay the annual fee to the Board of Overseers of the Bar. A registration statement was filed in February 1979.

2. Respondent admits the allegation in paragraph 2(b) of the petition of appearances before Judge Alexander on June 4, 1979 and again on July 9, 1979, in the Bridgton District Court, but denies such conduct was "unethical" or "unauthorized practice of law" for the reasons outlined in his letter to the Board dated August 16, 1979 and the letter dated February 26, 1979 and the reasons given herein below.

3. Now, on the technical side, apparently his name was not on the list of attorneys suspended as of June 1, 1979 since Judge Alexander in his letter referred to a "Freddie E. Lee" and he is not that person. In fact the letter dated August 2, 1979 from Mr. Barr was addressed to Freddie E. Lee and he has always practiced under the name of Freddie F. Lee.

4. Be that as it may, Respondent denies that he violated his plain duty as an attorney and Counselor at Law as alleged in paragraph 3 of the petition for the following reasons.
(a) He felt that the Supreme Judicial Court of the State of

Maine did not have the authority to make an "assessment" against him or any other lawyer in the State of Maine which in effect became compulsory "union dues" for lawyers, a principle condemned by the Maine State Legislature as late as 1979. And, nowwhere in the Maine Statutes does it appear that the Legislature ever delegated "taxing authority" to the Maine Supreme Judicial Court, along with the resulting sub-delegation by the said Court of the authority to summarily suspend a lawyer for failure to pay said tax.

Therefore, if the Court did not have the power to tax, then Respondent's failure to pay such tax could not be used as a basis for summary suspension under the "fruit of the poison tree principle".

(b) Assuming, only for the sake of argument, that the Court had the power and authority to "tax" or "assess" lawyers, then reference must be made to the heading of Rule 10 of the Maine Bar Rules which reads

"Assessment of Attorneys for Expenses of Administration"

The question is raised that it costs no more to administer the Bar Rules as to an attorney licensed to practice less than 3 years, or for more than 50 years than as to an attorney licensed for any number of years in between.

Thus it would seem that the "tax" or "assessment" is and was unequal when different amounts were taxed or assessed in Rule 10(d), a taxing principle held unconstitutional in this State and all other States. Thus, if the "tax" is unconstitutional then the failure to pay same cannot be used to impose the penalty of suspension.

5. Specific reference is made to Respondent's letters to the Board and to Mr. Barr regarding this matter and are incorporated herein as if set out verbatim.

6. As to Maine Bar Rule 3.2(a)(1), Respondent denies that he practiced law in a jurisdiction where to do so was a violation of law or court rule because such charge is so broad, vague, uncertain, and ambiguous that he cannot ascertain the wrong with which he is charged. The Reporter's Notes to the Rules

set out certain standards which say that "Thou shall not violate any Court Rules". He violated no law or Court rule.

7. As to Maine Bar Rule 3.2(a)(3), he did not aid any person, association or corporation in the unauthorized practice of law. Any aid given was to his client in assisting her in obtaining the divorce, a right which she has to represent herself. But no aid was given to her to assist her in representing someone else which is the activity proscribed by said rule.

8. As to Maine Bar Rule 3.2(f)(1), this rule is so vague, ambiguous and redundant that Respondent is unable to ascertain the wrong with which he is charged. All of the Bar Rules are prohibitory in the specifics of "A lawyer shall not do this nor do that" and a rule such as this is superfluous and unnecessary and certainly prohibits nothing specific for which he could be suspended.

9. Assuming for the sake of argument that the summary suspension was valid, Respondent wishes to remind the Board that he holds a valid license to practice law issued by the Supreme Court of Texas in 1961 which has not been revoked or suspended, so he was authorized to practice law under that license.

Wherefore, Respondent requests that the Grievance Commission determine that he has not conducted himself in a manner unworthy of an attorney and that no disciplinary action be imposed.

Dated: October 24, 1979.

FREDDIE F. LEE
Respondent
East Baldwin, Maine 04024
787-3367

RULE 6 REGISTRATION

(a) Registration Statement. Every attorney admitted to practice in this State, within 4 months after the effective date of this rule or within 4 months of his becoming subject thereto, and in January of each year thereafter, shall file with the Board a registration statement setting forth his current residence and office addresses, the date of his admission to the Bar of the Court, the facts concerning his admission to practice in any other jurisdiction including each federal court and administrative body where he has been admitted, and such other information as the Court or the Board may direct. The statement shall disclose whether the attorney is in good standing in each jurisdiction to which he has been admitted and if he is not in good standing in any jurisdiction, it shall contain an explanation of the circumstances. In addition to such registration statement, every attorney shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. Within 30 days of the receipt of a registration statement or supplement thereto filed by an attorney, the Board shall acknowledge receipt thereof in order to enable the attorney on request to demonstrate compliance with the requirement of this rule.

(b) Failure to File. Any attorney who fails to file the statement or any supplement thereto in accordance with the requirements of (a) above shall be subject to a summary notice of suspension by the Board (with the same effect as an order of

suspension by a justice of the Court) until he shall have complied therewith, whereupon he shall be reinstated without further action. An attorney so notified may apply to a justice of the Court with notice to the Bar Counsel for summary relief for good cause shown.

(c) Request for Inactive Status. Any attorney may advise the Board in writing that he desires to assume inactive status and to discontinue the practice of law. Upon the filing of such notice, the attorney shall no longer be eligible to practice law but shall continue to file registration statements for 3 years thereafter in order that he can be located in the event complaints are made about his conduct while he was engaged in practice. The attorney, however, will be relieved from the payment of the fee imposed by Rule 10.

(d) Register of Attorneys. Based upon the information made available to the Board by the filing of the statements provided for under this rule, or otherwise, and upon such other investigatory procedures as may be established by the Board, consistent with these rules, the Board shall compile and keep current a register for the Court of all persons admitted as members of the Bar of this State, and records of the death or other termination or suspension of the right of any attorney to practice law in this state. The information contained in such register and records shall be available to the public upon such terms as shall be reasonably necessary to support the costs of disseminating the same and at such times as shall be reasonably

convenient to the operating procedures of the Board.

(e) Removal from Register. Upon the filing of a notice that he wishes to assume inactive status, an attorney shall be removed from the roll of these classified as active until and unless he requests reinstatement to the active roll and pays for the year of reinstatement the fee imposed by Rule 10.

(f) Forms. The Board shall prepare and make available through the offices of the Clerks of the Superior and District Courts of the State, and through such other offices as the Board may from time to time determine, approved registration statement forms and change of address forms which shall be used by attorneys in complying with this rule.

RULE 10 ASSESSMENT OF ATTORNEYS FOR EXPENSES OF ADMINISTRATION

(a) Annual Fee. Every attorney required to register in accordance with these rules, other than those on inactive status pursuant to Rule 6(c) and suspended attorneys, shall pay an annual fee as established by the Court, which shall be paid to the Board with the registration statement required by Rule 6.

(b) Failure of Payment. Any attorney who fails to pay the fee required under subsection (a) of this rule within 30 days of its due date, shall be subject to a summary notice of suspension by the Board with the same effect as an order of suspension by a justice of the Court. An attorney aggrieved by any action taken by the Board under this section may apply to the Court, with notice to Bar Counsel, for summary relief for good cause shown.

(c) Reinstatement Fees. Any attorney suspended under the provisions of subsection (b) above shall, prior to reinstatement, pay all arrears due from the date of his last payment to the date of his request for reinstatement, and shall also pay an additional reinstatement assessment of $75.00 unless excused from such reinstatement assessment by the Board as a result of its determination that to impose the same would result in a grave injustice under the curcumstances.

(d) Amount of Fees. The annual fee which shall be payable together with and at the time of initial registration by an attorney, shall be Fifteen Dollars ($15.00) for attorneys

admitted to the practice of law in this State but conducting their practice primarily in another jurisdiction, and not maintaining an office here; and at the following rates for attorneys engaging in the practice of law in this state or maintaining an office here: Twenty-Five Dollars ($25.00) for those admitted to the bar of this State or any other jurisdiction for 3 or fewer years as of January 1 of that year; Twenty-Five Dollars ($25.00) for those admitted to the bar of this State or any other jurisdiction for more than 50 years as of such date; and one hundred dollars ($100.00) for all other attorneys.

(e) Use of Fees Paid. The fees so paid, pursuant to the foregoing sections, together with any other source of funds made available to the Board, shall be used to defray the costs of attorney registration, disciplinary investigation, hearings and enforcement, expenses of fee arbitrations and for such other purposes as the Board, with the approval of the Court may determine.

(f) Audit. The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition, and shall file a copy of such audit with the Court.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

* * * * * * * * * * * * * * *

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

* * * * * * * * * * * * * * *

ON APPEAL FROM THE SUPREME JUDICIAL COURT

OF MAINE

* * * * * * * * * * * * * * *

CERTIFICATE OF SERVICE

* * * * * * * * * *

I, Freddie F. Lee, appellant herein, do hereby certify that three (3) true and accurate copies of the Jurisdictional Statement has been served on all parties required to be served, and in particularly on the Board of Overseers of the Bar by placing three (3) true and accurate copies of the Jurisdictional Statement in the United States Mail, postage prepaid, addressed to Board of Overseers of the Bar, P.O. Box 1820, Augusta, Maine 04330, Attention of Michael E. Barr, Bar Counsel on the 14th day of January, 1981 and that corrections to the Jurisdictional Statement were similarly mailed on February 13, 1981.

Freddie F. Lee

FREDDIE F. LEE
Appellant, Pro Se
Route 107 (Sebago)
East Baldwin, Maine 04024
207/787-3367

Office-Supreme Court, U.S.
FILED
MAR 16 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

No. 80-6206

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE

MOTION OF APPELLEE BOARD OF OVERSEERS OF THE BAR TO DISMISS OR AFFIRM

Robert F. Preti, Esq.
443 Congress Street
Portland, Maine 04101

Counsel for Appellee

DATE: March 12, 1981

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

No. 80-6206

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE

MOTION OF APPELLEE BOARD OF OVERSEERS OF THE BAR TO DISMISS OR AFFIRM

The Appellee-Board of Overseers of the Bar respectfully moves to dismiss the Appellants appeal or affirm the judgement of the Supreme Judicial Court of Maine which appears as Board of Overseers of the Bar v. Lee, Me., 422 A. 2d 998.

The decision of Board v. Lee adequately sets out the facts upon which both the appeal and this motion are presented.

QUESTIONS PRESENTED

1. Whether a suspension by the Maine Supreme Judicial Court of the Appellant's Maine License to practice law for his failure to pay the annual registration fee pursuant to Maine Bar Rule 10, violates the Appellant's Constitutional guarantees of due process and equal protection.

MOTION TO DISMISS

The Judgement Below Does Not Raise A Substantial Federal Question And Rests On An Adequate Non-Federal Basis.

In its decision, the Maine Supreme Judicial Court noted that while the doctrine of seperation of powers is implicit in the Federal Constitution, it is explicit in the Maine State Constitution. Thus, the Maine Supreme Judicial Court determined that it had the inherent power to supervise attorneys as a specific outflow of its own State Constitution, and that as a prerequisite to receipt of a license to practice before the Court of this State a registration fee may be reasonably required to enable the Court to carry out its responsibility. The Appellant has not raised any federal challenge to the validity of the Maine Constitution. He has merely argued that the assessment of a registration fee constitutes a tax, which, pursuant to the Maine Constitution, can only be imposed by the Maine Legislature. The U.S. Supreme Court has previously rejected a similar challenge to the Deleware Supreme Court for want of a substantial federal question when the Delaware Court established its right to assess lawyer fees for a mandatory Client Security Fund established under the inherent power of the Courts to regulate attorneys. In re Reed, 396 U.S. 274 (1970).

The Appellant argues that the Maine Supreme Judicial Court is really "taxing" lawyers under the taxing provision of the Maine Constitution, not assessing them pursuant to the Court's inherent responsibility to supervise the practice of law. The foundation of the Appellant's argument rests on his disagreement with that part of the Board v. Lee decision which states:

> "Maine Bar Rule 10 is not a bill for imposing a tax or raising a revenue." Board v. Lee supra, page 11.

The Appellant does not challenge the validity of any portion of the Maine Constitution but claims that the Maine Supreme Judicial Court has misread or misinterpreted the Maine Constitution and insists that his suspension for failure to pay a "tax", which should normally be levied by the State Legislature,

denies him equal protection and due process. The Maine Supreme Court found ample case precedent to reject the Appellant's contention that the assessment was really a tax and concluded:

> "This appeal presents an issue which is resolved by thus defining the distinction between a tax and a license fee. We see no reason for using any other definition in the case at bar."

The decision that the assessment is not a tax involved no interpretation of federal law and the Appellant does not claim that any provision under which the definitions of assessment and tax were reached violated either the U.S. Constitution or federal law. Thus, the Appellant's claim that the Maine Supreme Judicial Court's decision did not properly construe the Maine Constitution does not raise a substantial federal question.

MOTION TO AFFIRM

The Question The Appellant Has Presented is Unsubstantial And Has Been So Foreclosed By Prior Decision Of This Court As Not To Need Further Argument.

The Board of Overseers of the Bar is a Court created agency authorized to collect Court assessed registration fees and to investigate and prosecute allegations of misconduct of attorneys. The Maine Supreme Court has found authority for this structure in its inherent powers as a separate branch of government stemming from the Maine Constitution. Any legal basis for an attack on such a mechanism under the U.S. Constitution has been previously foreclosed by this Court.

This Court has long held that the State Supreme Courts have the inherent authority to discipline their officers;

> "And it has been well settled, by the rules and practice of common law courts, that it rest exclusively with the court to determine who is qualified to become one of its officers, as

attorney and counsellor, and for what cause he ought to be removed." Ex Parte Secombe 60 U.S. 9, 13 (1856).

"It is laid down in all the books in which the subject is treated, that a court has the power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to punish them by fine and imprisionment for misconduct and other contempts, and, in gross cases of misconduct, to strike their names from the role." Ex Parte Wall 107 U.S. 265, 273 (1882).

"In Bushbacker v. Supreme Court of Ohio, No. C-2-75-743, 75-751, 76-309 (S.D. Ohio 1976), aff'd sub nom, Cuyahoga County Bar Ass'n. et al. v. United States Supreme Court of Ohio, 430 U.S. 901 (1977), the United States Supreme Court upheld the constitutionality of a rule of the Ohio court which required practicing attorneys to register and pay a biennial fee in the face of charges of violation of procedural due process, substantive due process and equal protection of laws.

In Tennessee a court rule providing for annual registration of attorneys and payment by them of an annual license fee has withstood a challenge on grounds of denial of the constitutional guarantees of due process and equal protection. Ables v. Fones, 587 F.2d 850 (6th Cir, 1978)." Board v. Lee Supra, pg. 13.

The ability of a State Supreme Court to discipline its officers and to assess them for that purpose has remained unquestioned whenever a state or federal court has been confronted with the issue. The Appellant cites no precedent for his position. He merely relies on his instinct that these assessments are somehow a tax and as a tax must be imposed by the State Legislature, not the Court. The Appellant was accorded both notice and opportunity to be heard on this issue. He argues in his jurisdictional statement that the previous Federal and U.S. Supreme Court decisions on this question, for one reason or another, did not pass "on any Constitutional question". He further argues that while assessments may be made against attorneys

for "financing other Unified Bar activities" (see Appellant's jurisdictional statement, page 6) it cannot be used for merely "policing the legal profession". He is in effect saying that while courts may impose fees for bar related activities, this does not necessarily allow them to impose fees for a court's primary responsibility, that of policing the profession. This argument is contrary to the wealth of case precedent.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or the judgement below affirmed.

Respectfully submitted

Robert F. Preti, Esq.
443 Congress Street
Portland, Maine 04101

Counsel for Appellee

No. 80-6206

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE

CERTIFICATE OF SERVICE

I, Robert F. Preti, attorney for the Board of Overseers of the Bar, appellee herein, do hereby certify that a true and accurate copy of this Motion has been served on all parties required to be served, and in particular on Freddie F. Lee, by placing said copy in the United States Mail, postage prepaid, addressed to Freddie F. Lee, Route 107 (Sebago), East Baldwin, Maine 04024, on the 13 day of March, 1981.

Robert F Preti

ROBERT F. PRETI
443 Congress Street
Portland, Maine 04101
Counsel for Appellee

Subscribed and Sworn before me this 13 day of March, 1981.

Michael E Bam

Notary Public